

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Article No.:

Honorable Curt Miller
Mayor of Pretty Prairie
119 West Main Street
Pretty Prairie, KS 67570

Dear Mayor Miller:

Re: Pretty Prairie Public Water System
PWS ID: KS2015501

This letter is in response to the correspondence sent to the United States Environmental Protection Agency, Region VII (EPA) by the city of Pretty Prairie, KS, related to the nitrates violations reported for the Public Water System (PWS or system) identified above. The EPA acknowledges that our agency received your letter dated April 16, 2008, that requested EPA's attendance at a meeting to discuss the on-going drinking water nitrate noncompliance of your system.

These drinking water standards and the regulations for ensuring these standards are met are called the National Primary Drinking Water Regulations (NPDWR), and all public water supplies must abide by these regulations. The NPDWR were promulgated pursuant to the Safe Drinking Water Act (SDWA), 42 U.S.C. § 300f et seq.

The EPA has set an enforceable standard called a Maximum Contaminant Level (MCL). MCLs are set as close to the Maximum Contaminant Level Goals (MCLGs) as possible, considering the ability of public water systems to detect and remove contaminants using suitable treatment technologies. The nitrate MCL has been set at 10 parts per million (ppm or mg/L), because the EPA believes, given present technology and resources, this is the lowest level to which water systems can reasonably be required to remove this contaminant should it occur in drinking water.

Your system has had a long history of drinking water violations from exceeding the nitrate MCL under the authority of the SDWA, which increases your consumers' exposure to the public health risks associated with nitrate. According to the SDWA, systems that cannot meet the 10 ppm MCL cannot use bottled water on a long term basis to address the underlying violations that affect public health. Your system must come into compliance with the nitrate MCL as soon as reasonably practicable.

The EPA sent correspondence to the city on February 4, 2008, which clarified the use of bottled water to resolved nitrate violations only on a temporary basis. The goal of the SDWA is to protect public health; therefore the long term use of bottled water in lieu of drinking water treatment is expressly prohibited in the SDWA.

—The Kansas Department of Health and the Environment (KDHE) is the primacy agency for the SDWA implementation in the state of Kansas. Since the KDHE is the primacy agency for the SDWA in State of Kansas, the EPA will defer your meeting invitation to the KDHE. The EPA appreciates the invitation extended by the city of Pretty Prairie, but our agency does not intend to participate in your compliance discussion with KDHE, at this time.

—The EPA ~~continues to~~ encourages the city of Pretty Prairie to work with the ~~Kansas Department of Health and the Environment (KDHE)~~ KDHE to take decisive action to return to compliance with the nitrate MCL. Our agency strongly encourages and highly recommends that the city of Pretty Prairie explore every cooperative opportunity with KDHE to find a way to achieve compliance with the nitrate MCL under the authority of the SDWA.

The EPA's priority is to ensure that your system returns to compliance in a timely manner. EPA considers your system noncompliant, because it has failed to comply with the terms of an Order and other enforcement tools utilizing a compliance schedule with the KDHE. In the interest of ensuring that your system enters into, and adheres to enforceable compliance schedules, EPA urges your system to cooperate with the Kansas Department of Health and the Environment (KDHE) to achieve compliance of the nitrate MCL using approved compliance schedules.

~~The KDHE is the primacy agency for the SDWA in State of Kansas. The EPA appreciates the invitation extended by the city of Pretty Prairie, but our agency does not intend to participate in your compliance discussion with KDHE, at this time.~~

Our agency is willing to assist KDHE in compliance or enforcement coordination to achieve an approved compliance schedule in an enforcement mechanism by September 30, 2008. The EPA expects that an approved schedule will promote measurable progress towards compliance, and will include clear milestones, an expected compliance date, and enforceable consequences for failure to adhere to the schedule. The EPA expects the city of Pretty Prairie to achieve compliance with the nitrate MCL as soon as reasonably practicable, but no later than December 31, 2009.

The EPA recognizes that the majority of nitrate violations in your system have documented a lack of progress towards compliance with the nitrate MCL. However, EPA has identified that nitrate violations in your ~~System-system~~ may further delay your progress towards compliance with the nitrate MCL, and are therefore incompatible with federal regulatory requirements of the SDWA.

~~The EPA's priority is to ensure that noncompliant systems are progressing towards compliance in a timely manner. EPA considers your system noncompliant, because it has failed to comply with the terms of an Order and other enforcement tools utilizing a compliance schedule with the State of Kansas through KDHE.~~

EPA is aware that funding shortfalls have been cited as a reason for failure to meet one or more requirements of previous compliance schedules in your attempt to address nitrates. Should your system have insufficient funds to implement the findings of the feasibility study or to take steps in a compliance schedule, you should supply documentation supporting that claim to KDHE. A claim of insufficient funds, without complete documentation, is an insufficient reason to excuse failure to progress towards compliance with the requirements of the SDWA. Furthermore, failure to seek adequate funding, whether through tax levies, utility rate increases, or submissions of grant proposals, is not adequate justification for failure to meet the terms of a compliance schedule, or otherwise show progress towards compliance.

Should the KDHE desire assistance in determining whether your system has adequately demonstrated a fiscal inability to comply with the requirements of the SDWA, it may wish to utilize the resources of the Environmental Finance Center (EFC), an organization associated with Boise State University which assists local governments with expanding their approach to environmental financing. The EFC may be able to provide assistance to KDHE to more effectively determine whether your ~~System-system~~ has the funds to implement the recommendations of the feasibility study. Additional information regarding the EFC can be found on the internet at <http://efc.boisestate.edu/efc/>. If KDHE is interested in pursuing this option, EPA would be more than willing to speak to your ~~System-system~~ and KDHE about how the EFC can be of assistance. Please contact us to let us know if you decide to take advantage of this opportunity.

Please note that it is your system's responsibility to come into compliance with the statutory and regulatory requirements of the SDWA; and that responsibility does not end with a demonstration of economic hardship. Your system has to demonstrate a compelling economic factor as a reason for your system's inability to comply with a Maximum Contaminant Level (MCL) or treatment technique requirement in timely fashion, or to implement measures to develop an alternative source of water supply.

Please be advised that failure to comply with the requirements of the nitrate MCL, including submitting the plans necessary to implement the recommendations of the feasibility study, may subject the system to an enforcement action brought by KDHE as the primacy agency, under the authority of the NPDWR and SDWA. In the event that EPA takes the lead in an enforcement action, then EPA may seek injunctive relief as well as possible penalties, in addition to requiring your system to comply with the SDWA and applicable regulations.

EPA would like to thank Pretty Prairie for its efforts in exchanging information. If you have any questions regarding these issues, please contact Stacie Tucker, of my staff, at (913) 551-7715.

Sincerely,

William A. Spratlin
Director
Water, Wetlands and Pesticides Division

cc: Dave Waldo, Kansas Department of Health and Environment

bcc: Monica Wurtz, WWPD/DRWM

| CONCURRENCE:WWPD:WENF:Tucker:H:\WENF\2008 Correspondence\Tucker\ Ltr to Pretty Prairie re Nitrates Issue 5.9.08.doc | | | | | | |
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| NAME | Tucker | Wurtz | Dudding | Mindrup | Huffman | Spratlin |
| DIV/ BRANCH | WWPD/ WENF | WWPD/ DRWM | CNSL | WWPD/ DRWM | WWPD/ WENF | WWPD |
| SIGN | | | | | | |
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